IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 357 of 1985

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKANT CHIMANLAL SHAH, DEPUTY ENGINEER - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MRS SANGEETA PAHWA for MR PM THAKKAR for Petitioner(s) : 1,
MS PAURAMI SHETH, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 22/09/2005

ORAL JUDGMENT

The petitioner before this Court is a retired Chief Engineer in the Gujarat Water Supply & Sewerage Board (hereinafter referred to as, "***the Board***"). The petitioner has challenged the final seniority list of Junior Engineers published by the State Government on 18th May,

1994. The petitioner's grievance is with respect to the placement of the petitioner in the said seniority list vis-a-vis one Shri C.A Doshi, the respondent no.2. It is the grievance of the petitioner that the respondent no.2 was junior to the petitioner. Nevertheless, the petitioner was given seniority below the respondent no.2. It is the case of the petitioner that all along the petitioner had been considered senior to the respondent no.2. However, in the impugned final seniority list the petitioner has been shown to be junior to the respondent no.2.

Mrs. Pahwa has submitted that the petitioner was appointed as a Junior Engineer in the Public Health Engineering Wing under the then Panchayat and Health Department of the State on 26th July, 1966. He earned first promotion as Deputy Engineer on 17th July, 1971. However, he was then reverted to his substantive cadre of Junior Engineer and once again was promoted as Deputy Engineer on 21st January, 1972. The respondent no.2 was appointed as a Junior Engineer on 15th April, 1966 in the Roads & Buildings Wing of the Public Works Department. However, he was rendered surplus in his department. The respondent no.2 was, therefore, absorbed in the Public

Health Engineering Wing on 30th September, 1968. The respondent no.2, therefore, was entitled to seniority as Junior Engineer in Public Health Engineering Wing with effect from his absorption in the Public Health Engineering Wing on 30th September, 1968. The respondent no.2, therefore, shall be considered junior to the petitioner. The respondent no. 2 was indeed considered junior to the petitioner. He was promoted as Deputy Engineer on 10th February, 1972 i.e. after the petitioner was appointed as Deputy Engineer. Both the petitioner and the respondent no.2 were further promoted as Executive Engineers in the month of May, 1985. However, as the respondent no. 2 was considered senior to the petitioner, he came to be promoted as Superintending Engineer on 9th March, 1993 and as Chief Engineer from 5th May, 1998. Whereas, the petitioner was promoted as Superintending Engineer a little later on 19th May, 1993 and as the Chief Engineer on 4th January, 2000. Mrs. Pahwa has submitted that the petitioner had become eligible for promotion as Chief Engineer in the year 1996. The petitioner is, therefore, entitled to a deemed date of promotion as Chief Engineer as on 1996 and for the consequential reliefs. She has submitted that until the provisional seniority list published on 29th February, 1980, the

petitioner was treated as senior to the respondent no.2. For the first time in the provisional seniority list published on 29th February, 1980, the petitioner was shown junior to the respondent no.2. The petitioner lodged objection against his placement in the said seniority list vis-a-vis the respondent no.2. Nevertheless, without considering the objection lodged by the petitioner, in the revised provisional seniority list as well as final seniority list, the petitioner has been shown to be junior to the respondent no.2. She has submitted that prior to 1st October, 1964 the Public Health Engineering Wing was one of the branches under the Public Works Department. However, on and from 1st October, 1964 the functions of the Public Health Engineering Wing stood transferred to Panchayat and Health Department. Thus, since 1st October, 1964 the Public Health Engineering Wing was independent of Public Works Department. The services of the personnel in the Public Works Department and in the Public Health Engineering Wing became distinct having their own seniority and channel of promotion in the respective department. The interse transfer of the personnel in the Public Works Department and the Public Health Engineering Wing was, therefore, not permissible. She has submitted that the order of transfer of the

respondent no.2 to the Public Health Engineering Wing was explicit. She has submitted that the respondent no.2 had been rendered surplus in his own department. Therefore, by order dated 30th September, 1968 he was absorbed in the Public Health Engineering Wing. In view of the prevalent policy of the State Government the respondent no.2 would take seniority from the date he was transferred or absorbed in the Public Health Engineering Wing i.e. 30th September, 1968. Considering the said date to be the relevant date the petitioner was senior to the respondent no.2. He, therefore, had a prior right to be promoted to the higher posts of Executive Engineer, Superintending Engineer and Chief Engineer. In support of her contention she has relied upon the judgment in the matter of **S.S.Thakore and another v/s. State of Gujarat and others** [1992 (1) GLR 68].

The petition is contested by the learned AGP Ms. Sheth. She has submitted that it is not true that the respondent no.2 was transferred to the Public Health Engineering Wing as he was rendered surplus in his parent department. She has submitted that the order dated 30th September, 1968 expressly stipulated that the said order of transfer was made in the interest of public service

and that the seniority of the persons transferred would be decided thereafter. She has also submitted that ever since his transfer to the Public Health Engineering Wing the respondent no.2 was considered senior to the petitioner. In the provisional seniority lists published on 24th September, 1976 and 30th October, 1979 also the respondent no.2 was considered senior to the petitioner. The petitioner did not lodge objection against the said provisional seniority lists. She has submitted that the respondent no.2 was considered senior to the petitioner as the respondent no.2 was appointed as Junior Engineer before the petitioner was so appointed. Besides, the respondent no.2 was promoted as Deputy Engineer on 10th February, 1972 and the petitioner was promoted as Deputy Engineer on 14th June, 1972. She has submitted that on the basis of principle of continuous officiation the respondent no.2 was senior to the petitioner in cadres of Junior Engineer, Deputy Engineer, Executive Engineer, Superintending Engineer and of Chief Engineer.

In the matter of S.S.Thakore (supra), the Division Bench of this Court, considering the prevalent policy of the State Government, held that, **“...the persons who are rendered surplus in their parent department, if are**

absorbed in any other department of the State Government, they shall take seniority from the date of their absorption and shall not be entitled to seniority from the date of their appointment in their parent department." Hence, Mrs. Pahwa is right in contending that on his being rendered surplus in his parent department the respondent no.2, on his absorption in the Public Health Engineering Wing, should have taken seniority from the date of absorption and not from the date of his initial appointment as Junior Engineer in his parent department. However, I must say that in this matter the pleadings of both the parties are inadequate. The order of transfer dated 30th September, 1968 did refer to "**the surplus Junior Engineers**" but it had also been expressly stated that the said order was made **"in the interest of public service"**. It was further stated that **"the seniority of these persons will be decided hereafter as per Government orders"**. It has, however, not been brought on the record whether any specific order was made in connection with the seniority of the said persons including the respondent no.2 herein. Besides, from the service details recorded hereinabove, it appears that the respondent no.2 was indeed treated as senior to the petitioner in the Public Health Engineering Wing. If that

be so, that position cannot be reversed/unsettled now after nearly 40 years and long after both the petitioner and the respondent no.2 have retired from service. Moreover, it is not controverted that in the provisional seniority lists published in the years 1976 and 1979 also the petitioner was given placement below the respondent no.2. The said position was not objected to by the petitioner. The petitioner's challenge to the said seniority position requires to be rejected on the ground of acquiescence also.

Further, though the pleadings are not specific it appears that in course of time the service of the petitioner as well as of the respondent no.2 stood transferred to the Gujarat Water Supply and Sewerage Board. They earned their further promotion as Executive Engineer, Superintending Engineer and Chief Engineer in the said Board. In other words, the petitioner has claimed deemed promotion as Superintending Engineer and Chief Engineer in the said Board. However, the said Board has not been impleaded as party respondent. The relevant Recruitment Rules prevalent in the Board have been produced on the record of the matter. The said Recruitment Rules provide that promotion to the post of

Chief Engineer shall be on the basis of selectivity. The post of Chief Engineer being a selection post, the petitioner cannot claim promotion as of right. At the most the petitioner can claim a right to be considered in accordance with the Recruitment Rules. As the petitioner had earned promotion as Chief Engineer as far back as in the year 2000 and has also retired from service since 1st September, 2000; in absence of the Board being party respondent to this petition, no mandamus can issue to the Board to consider the case of the petitioner for promotion as Superintending Engineer or Chief Engineer in retrospect.

In above view of the matter the petitioner is not entitled to the relief prayed for by him. The petition is dismissed. Rule is discharged. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

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